



An
Bord
Pleanála

Inspector's Report ABP-320450-24

Type of Appeal

Appeal under section 653BJ(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map.

Location

Lands at Holybanks, Swords, Co. Dublin

Local Authority

Fingal County Council

Planning Authority Reg. Ref.

FIN-C657-RZLT-24-13

Appellant(s)

Cairn Homes Properties Ltd.

Inspector

Sinéad O'Connor

1.0 Site Location and Description

The lands identified as lands at Holybanks, Swords, Co. Dublin (Parcel ID FL0000002188) are located in the north of Swords. The lands are roughly 'C' shaped and surround the adjoining commercial premises. The lands are currently under grass and include the area of the Glen Ellan Road. To the north, the site adjoins the Broad Meadow River, and to the south and west the site adjoins established residential development. To the east are the commercial and industrial areas associated with the Swords Business Campus.

2.0 Zoning and Other Provisions

The relevant plan is the Fingal County Development Plan 2023-2029:

- The site is zoned MRE-Metro and Rail Economic Corridor, to facilitate opportunities for high density mixed use employment and commercial development and support the provision of an appropriate quantum of residential development within the Metro and Rail Economic Corridor.
- Residential is permitted in principle on zoned MRE lands, as per page 492 of the Plan.
- The lands form part of MP 8.A. Table 2.17 'Operational Masterplans' lists Estuary West under MP 8.A.
- There is a Proposed School site and a Sites & Monuments Records (SMR) site mapped within the lands.

SMR Ref. DU011-080 is in the north of the site and is described as a Ring Ditch.

The site occurs within Swords Masterplans Part D: Estuary West, published May 2019.

- Under the masterplan it is proposed that the site will accommodate residential development, a school site, local shops and recreational areas.
- Under Figure 9.1 'Phasing' of the masterplan, the site contains Phase 1A, Phase 1B, Phase 2 and Phase 3 development. Phase 1 development is provided for pre-metrolink.

3.0 Planning History

PA Ref. RZLT034/22, ABP Ref. 316471: On the 08 June 2023 the Board decided to confirm the determination of the local authority and include the site on the RZLT map.

SHD application ABP Ref. TA06F.313337: On the 14 April 2022 an application was lodged for 621 no. residential units and ancillary infrastructure at the subject site. A decision has yet to be made on this application.

4.0 Submission to the Local Authority

The appellants made a submission to the local authority seeking to have their land removed from the final map on the basis of the following:

- The decision has not been made on the SHD application lodged in August 2022.
- The appellants have undertaken pre-planning consultation in respect of an LRD application at the site (PA Ref. LRD0018/S1).
- The site is not vacant or idle as a planning application is being prepared for its development.
- Significant upgrades are required to the public road network to serve development at the site.
- Archaeological assessments associated with the SHD application note the potential for archaeological remains on the lands and the requirement for mitigation measures. The lands should be omitted from the RZLT map until planning permission is secured and the results of archaeological excavations determined.

5.0 Determination by the Local Authority

The local authority determined that:

In pursuance of its functions under the above-mentioned Act, as Planning Authority, the County Council for the County Fingal decided to include the above land on the final map of the Residential Zoned Land Tax for the reasons outlined overleaf.

Reason:

It has been determined that the site in question fulfils the qualifying criteria set out in Part 22A of the Taxes Consolidation Act 1992 (as introduced by the Finance Act 2021) for inclusion on the RZLT map for the following reasons:

- 1) The land in question is included in a development plan or local area plan and is zoned for residential development or zoned for a mixture of uses, that includes residential development.
- 2) The land is serviced, or it is reasonable to consider may have access to services. Serviced means having access to the necessary public infrastructure and facilities including road and footpath access, public lighting, foul sewer drainage, surface water drainage and water supply necessary for dwellings to be development and for which there is services capacity available sufficient to enable housing to be developed.
- 3) The land is not affected in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence of archaeological or historic remains.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The decision has not been made on the SHD application lodged in August 2022.
- The appellant is in the process of preparing an LRD application at the site. Pre-planning meetings have been held (LRD0018/S1 and LRD0018/S2). The LA issued their LRD Opinion on 23 May 2024.
- The site is not vacant or idle pending securing a planning permission.
- Significant road upgrade works are required to serve the proposed development.
- Archaeological assessments associated with the SHD application note the potential for archaeological remains on the lands and the requirement for mitigation measures. The lands should be omitted from the RZLT map until planning permission is secured and the results of archaeological excavations determined.
- The tax should be deferred on the basis that the SHD decision has been delayed.

7.0 Assessment

The grounds of appeal have been fully considered. Under section 653J of the Taxes Consolidation Act 1997 as amended, the Board's role in the current appeal is to review the determination of the local authority under section 653E which is based on the application of the relevant criteria set out in section 653B of the Act for inclusion on the RZLT map. This position is consistent with the Residential Zoned Land Tax-Guidelines for Planning Authorities June 2022 which clearly sets out in section 3.3.2 that:

“in considering appeals, An Bord Pleanála is restricted to considering the grounds of appeal, the determination of the local authority on the submission made during public display period, and any additional information on the servicing or use of the land which the Board may seek from the landowner, Local Authority or stakeholders identified in article 28 of the 2001 regulations. In assessing any appeal, the Board is restricted to considering whether the lands meet the qualifying criteria set out in section 653B only”.

The subject site, as shown in the appeal statement, was the subject of a previous RZLT determination under ABP Ref. 316471. In this previous case, the Board decided to confirm the determination of the local authority to retain the site on the RZLT map. The context and character of the site has not significantly changed since this previous determination.

The land is zoned for mixed use development including residential under the Development Plan and, therefore, meets the criteria under Section 653B(a) of the Taxes Consolidation Act 1997, as amended.

The appellant states that significant infrastructure works are required to serve the site and, therefore, the lands do not meet the criteria for inclusion on the RZLT map.

The site immediately adjoins Glen Ellan Road, Jugback Terrace Road and the public road at Applewood. The Transportation Planning Report submitted to the LA dated 08 May 2024 states that the site is served by the public road, footpath and lighting network along its southern boundary. On this basis, it is reasonable to consider that a connection to the public road network may be provided at the site. I consider that the site meets the criteria under Section 653B(b).

In respect of connectivity and capacity in the water network, I note that the site immediately adjoins public roads that also serve existing residential development in the vicinity. On the basis that there are existing residential developments located in close proximity to the site, it is reasonable to consider that there is foul and potable water infrastructure located at or close to Glen Ellan Road, Jugback Terrace or Applewood that the subject site may connect to. The Uisce Éireann (UE) Wastewater Treatment Capacity Register published June 2023 (accessed 11 September 2024) indicates that there is capacity available at the Swords WWTP. The UE 10-Year Water Supply Capacity Register Published June 2023 (accessed 11 September 2024) indicates that there is potential capacity available at the Greater Dublin Area Water Resource Zone however, Level of Service (LoS) improvements are required to meet 2032 population targets. Page 8 of the RZLT Guidelines sets out that a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. In light of the foregoing, I consider that the site meets the criteria for inclusion on the RZLT map under Section 653B(b) of the Act.

The appellant states that the site is not vacant or idle as the lands are the subject of current and future planning applications.

The definition for vacant or idle is provided in Section 653A of the Taxes Consolidation Act 1997, as amended. Under this definition, vacant or idle land comprises development that is not unauthorised development and is not required for or integral to the operation of a trade or profession being carried out adjacent to the land. With reference to this definition, I note that the subject site is under grass and has no association with the commercial unit to the east. Lands the subject of an ongoing planning application are not included in the definition of vacant or idle, therefore, the lands do not meet the criteria for exclusion under Section 653B(ii).

The appellant states that the potential for archaeological material at the site should exclude the lands from inclusion on the RZLT map.

Chapter 8 'Archaeological, Architectural and Cultural Heritage' of the Environmental Impact Assessment Report submitted to the Board under Ref. TA06F.313337 indicates that archaeological materials at the site would be preserved in-record rather than in-situ. It is further stated in this report that no residual impacts on archaeology will occur as a result of the development proposed. I note that none of the policies or

objectives of the Development Plan or the assessment undertaken by FCC preclude the provision of dwellings on zoned land due to the presence of archaeological material.

There are no physical conditions or constraints at the site that would preclude the provision of dwellings, therefore, the site meets the criteria for inclusion of the RZLT map under Section 653B(c) of the Act.

The appeal submission has raised grounds that are outside of the scope of the Boards assessment including the deferral of payment of the RZLT. As per section 653J of the Act, the Boards role is to review the LA determination, which is based solely on the criteria set out in Section 653B of the Act. The legislation does not give the Board any role in assessing the deferral of payment of RZLT. Section 8.1 of the RZTL guidelines states that: *“the tax liability can be deferred when a grant of planning permission for residential development is appealed to An Bord Pleanála by a third party. Management of details relating to this is a matter for the Revenue Commissioners and the landowner”*.

8.0 Recommendation

Having regard to the foregoing, I consider that the lands identified as lands at Holybanks, Swords, Co. Dublin (Parcel ID FL0000002188) meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. The grounds of appeal have not raised other matters under section 653B of the Taxes Consolidation Act 1997, as amended and there are no matters arising that warrant exclusion of the subject lands from the final map. I recommend that the determination of the local authority be confirmed, and the lands retained on the RZLT map.

9.0 REASONS AND CONSIDERATIONS

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax- Guidelines for Planning Authority June 2022 which are considered to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as lands at Holybanks, Swords, Co. Dublin (Parcel ID FL0000002188) are located on lands zoned MRE-Metro and Rail Economic Corridor, which facilitates mixed use including residential development and, therefore, are considered in scope of section 653B(a). The lands immediately adjoin the public road network to the south and west, therefore, it is reasonable to consider that a connection can be made to the public road. The site does not meet the criteria for exclusion under Section 653B(ii) of the Act, as per the definition provided in Section 653A. The potential for archaeological material or features at the site does not preclude the provision of dwellings, with reference to the policies and objectives of the Development Plan. No physical characteristics or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the mixed use zoning objective that applies to these lands.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Fingal County Council

Local Authority Reference Number: FIN-C657-RZLT-24-13

Appeal by Cairn Homes Properties Ltd care of McGill Planning Ltd. in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, against the inclusion of the land on the Residential Zoned Land Tax Map by Fingal County Council on the 27 day of June 2024 in respect of the site described below.

Lands at: Lands at Holybanks, Swords, Co. Dublin

Decision

The Board in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, and based on the reasons and considerations set out below, hereby decided to:

The Board confirm the determination of the local authority and direct the local authority to retain the lands identified as lands at Holybanks, Swords, Co. Dublin (Parcel ID FL0000002188) on the final map.

Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax- Guidelines for Planning Authority June 2022 which are considered to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as lands at Holybanks, Swords, Co. Dublin (Parcel ID FL0000002188) are located on lands zoned MRE-Metro and Rail Economic Corridor, which facilitates mixed use including residential development and, therefore, are considered in scope of section 653B(a). The lands immediately adjoin the public road network to the south and west, therefore, it is reasonable to consider that a connection can be made to the public road. The site does not meet the criteria for exclusion under Section 653B(ii) of the Act, as per the definition provided in Section 653A. The potential for archaeological material or features at the site does not preclude the provision of dwellings, with reference to the policies and objectives of the Development Plan. No physical characteristics or other reasons have been identified that would prevent the development of these lands in principle for residential purposes in accordance with the mixed use zoning objective that applies to these lands.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Sinéad O'Connor

Planning Inspector

Date: 12 September 2024